IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO. 2167 OF 2003

M/s. Ovhal Agencies...Applicant.

versus

State of Maharashtra and ors..... Respondent.

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Mr. Kuldeep S.Patil for applicant
Ms. M.H. Mhatre APP for State.

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CORAM ; A.M. KHANWILKJAR, J.

DATED; DECEMBER 20, 2005

P.C.

1. The petitioner prays that the process issued by the trial court against the applicant in relation to criminal case being C.C. No. 1824/99 pending in the court of JMFC (A.C.) (Link 1 court), Pune be quashed and set aside. In view of the recent decision of our High Court in case of **V.K.Jain & ors Vs. Pratap V. Padode reported in 2005 (3) Mh.L.J. 778,** remedy of Revision Application was available to the applicant on the ground which are raised before this court, which can be effectively answered even by the Revisional Court.

2. Indeed, the applicant had taken recourse to that remedy, as the counsel for the applicant points out

that, after order of issuance of process applicant had filed application before the trial court for recalling of process, which came to be rejected as not maintable in view of the decision of the Supreme Court in **Adalat Prasad Vs. Rooplal Jindal & ors.** The applicant then carried the matter in revision before 2nd Addl.Sessions Court, Pune being application No.345/02 which was also rejected on 16th October 2004 following the above said decision in Adalat Prasad. Thereafter present application has been filed on 25-2-2005. However, the applicant has been advised not to challenge the order of the Revisional Court because even the revision came to be dismissed, relying on the decision of **Adalat Prasad of the Apex Court.**

3. In otherwards, the grievance of the applicant on merits that the criminal case cannot proceed on the basis of second notice, has not been examined so far in the earlier proceedings. In the circumstances, instead of entertaining this question for the first time in proceedings under section 482 of the Code, as remedy of revision is available to the petitioner and the grievance can be effectively answered by the Revisional Court, this petition is disposed of with liberty to the petitioenr to take recourse to remedy of revision, if so advised.

4. For the nature of order which I propose to pass, in my opinion, it will not be necessary to burden the respondent complainant with the notice. Instead, the respondent complainant can agitate all the questions and other objections before the Revisional Court as may be available and permissible by law.

5. With this observation, this application is disposed of with liberty to the applicant to take recourse to revision, if so advised. If such application is filed, the same be decided on its own merits in accordance with the law.

6. If there is any delay in filing the revision application, the court will reckon the fact that the applicant had pursued the matter before lower court and thereafter the present application, and that period will have to be excused for the purpose of computing limitation, as the petitioner was bonafide pursuing such remedies.

7. Application is disposed of on the above terms. All questions are left open. Revision Application be filed within four weeks and till such time no precepitative steps be taken against the petitioner.

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